IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Henricus Petrus Joseph TE RIELE, et al.

Title: HOMOLOGOUS RECOMBINATION IN MISMATCH REPAIR
INACTIVATED EUKARYOTIC CELLS

Appl. No.:   09/884,877
Filing Date: 6/20/2001

Patent No.:   7,199,280
Issued: 4/3/2007

Examiner: SGAGIAS, MAGDALENE K.
Art Unit: 1632

Conf. No.:   3654

REQUEST FOR RECONSIDERATION OF DECISION ON
PATENT TERM ADJUSTMENT PETITION
UNDER 37 C.F.R. 1.705(d)

MS Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants disagree with the Decision on Request for Reconsideration of Patent Term
Adjustment mailed on September 4, 2007, and herein request reconsideration of the decision as
to the bases presented under Rule 702(a) and Rule 702(b).

Concerning the basis under Rule 702(a), the PTO does not seem to dispute Patentee's
calculation of the 173 day period. Instead, in the Decision mailed on September 4, 2007, the
PTO dismissed this request/application as untimely filed since it was not filed before
November 14, 2006 (the date of payment of the Issue Fee). Presumably, the PTO's decision was

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based on a Request for Reconsideration filed under 37 C.F.R. 1.705(b), and not 37 C.F.R. 1.705(d) as filed.

It is submitted that the Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(d) is not untimely since the PTA determination at the time the application was allowed was zero (0). This discrepancy in delay could not have been raised in a Request for Reconsideration of Patent Term Adjustment prior to payment of the Issue Fee, and therefore dismissal of the argument as untimely filed was improper.

Concerning the basis under Rule 702(b), the PTO does not seem to dispute Patentee's calculation of the 577 day period. Instead, in the Decision mailed on September 4, 2007, the PTO dismissed this request/application as inconsistent with a Federal Register notice interpreting 35 U.S.C. § 154(b)(2)(A). The PTO lacks substantive rule making authority, and the rights under § 154(b)(2)(A) are substantive. Furthermore, the PTO's interpretation of § 154(b)(2)(A) is inconsistent with the law, because the statute limits the patent term adjustments to the extent they "overlap." Overlap, as that term is used under 35 U.S.C. 154(b)(2)(A), cannot mean delays under 35 U.S.C. 154(b)(1)(A) (§§ 1.702(a) and 1.703(a)) and delays under 35 U.S.C. 154(b)(1)(B) (§§ 1.702(b) and 1.703(b)) overlap when the period of delay under 35 U.S.C. 154(b)(1)(A) occurred less than three years after the actual filing date of the application. The PTO's interpretation violates an accepted canon of statutory interpretation, which maintains that plain meaning controls the interpretation of the unambiguous language of the legislature.

In view of the above, reconsideration is respectfully requested. The PTO is asked for the just, speedy, and inexpensive disposition of this Request for Reconsideration, including correcting any inadvertent math errors, making adjustments based on either basis for reconsideration should one basis be not granted, and making other just and fair determinations.

It is believed that no fee is due in connection with this paper, however, the Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong

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amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 5, 2007

By _____ (45,943)

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